No. 14,902

United States Court of Appeals

For the Ninth Circuit

G. A. MILLER, W. W. LORD, RALPH SMEED, L. H. STAUS and JACK SMEED, Trustees of John W. Smeed Estate,

Appellants,

vs.

SAM WAHYOU, DIAMOND-S RANCH CO., SAM WAHYOU, K. R. NUTTING and THOMAS G. LEE, as Trustees for the assets of Diamond-S Ranch Co., THOMAS G. LEE, TOY QUONG, JOE SIN, K. R. NUTTING, YIP K. TOON and HERBERT JANG,

Appellees.

Appeal from the United States District Court for the District of Nevada.

APPELLEES' BRIEF.

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PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

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APPELLEES' BRIEF.

I.

APPELLEES' STATEMENT OF THE CASE.

The facts stated by appellants in their brief are so biased and incomplete that appellees deem it necessary to re-state the facts.

The trial Court in its opinion and decision on motions for summary judgment did an excellent job in stating the nature of the case and the facts and issues involved. Appellees do not feel that they can improve on that statement, and for the convenience of this Court, appellees have printed Judge Ross' opinion as an appendix to this brief. These appellees adopt the facts stated in Judge Ross' opinion.

Appellees would like to add, however, that there was admitted in evidence upon the hearing of the various motions, the balance sheet of Diamond-S Ranch Co. dated December 31, 1951, which was the balance sheet nearest to May 21, 1951, the date of the sale of Corbari's stock at public auction. This balance sheet shows that the liabilities of Diamond-S Ranch Co. on December 31, 1951, exceeded the assets by $7,122.40. In other words, Corbari's stock as of December 31, 1951, was worth exactly less than nothing, yet Wahyou actually paid $5,500.00 therefor.

II.

CHRONOLOGY.

There are many dates involved in this case, and appellees here set forth in chronological order the dates of the instruments or the happening of events that are material here, as follows:

Date	Instrument or Event
March 21,1925, amended 1937	—Enactment of Nevada Corporate Revivor Law.
March 12, 1945	—Enactment of Uniform Stock Transfer Act.
December 17, 1954	—Diamond-S Ranch Co. incorporated under the laws of Nevada.
November 19, 1947	—Corbari executed a note to C-Arrow Cattle Company, Stockton, and this note was assigned by C-Arrow Cattle Company to Bank of America N. T. & S. A., Hunter Square Branch, Stockton.
January 4, 1949	—Corbari executed a General Pledge Agreement to Bank of America, Hunter Square Branch, Stockton.
March 25, 1950	—W. W. Lord, as Trustee for the John W. Smeed Estate, wrote a letter to Corbari, asking for a second lien on his stock in Diamond-S Ranch; also stating that a lawyer in California refused their second lien and wanted the Trustee to pay off the Bank; also stating that the Trustee could not pay off the Bank. This letter shows conclusively that the Appellants knew that Corbari had pledged his stock in Diamond-S Ranch to the Bank on that date.
July 10, 1950	—Corbari executed renewal note in sum of $6,000.00 to Bank, which was likewise secured by Corbari's General Pledge Agreement.
September 7, 1950	—Diamond-S Ranch Co. filed its Certificate of Dissolution with the Office of the Secretary of State.
September 18, 1950	—Corbari executed a second Pledge Agreement for the benefit, first, of the Bank of America to secure Cor-

Date	Instrument or Event
	bari's note to it, and, second, to secure D. W. Zignego and Forrest E. Macomber for contingent indebtedness owing by Corbari to them.
October 17, 1950	—Corbari paid Bank of America $1,000.00, leaving a balance of $5,000.00 plus interest due to the Bank.
October 17, 1950	—Bank of America, Hunter Square Branch, assigned Corbari's promissory note, together with its security consisting of 310 Shares of the Capital Stock of Diamond-S Ranch Co. owned by Corbari, unto Sam Wahyou, who paid the Bank $5,000.00 plus interest therefor.
October 31, 1950	—Corbari executed a so-called "Assignment" to Estate of Smeed.
May 21, 1951	—Pledgee's sale of Corbari's stock at public auction to Sam Wahyou.
December 7, 1951	—Diamond-S Ranch Co. filed its Certificate of Revival with the office of the Secretary of State in Nevada, reinstating the Corporation as of September 7, 1950.

III.

ARGUMENT.

Both appellants and appellees made motions for summary judgments and judgments on the pleadings. These motions were heard at the same time and all parties stipulated that they had no further evidence to offer and the cause could be submitted upon these motions. At the hearing of these combined motions, it appeared that the matters in controversy between

appellants and these appellees were actually very simple and could be summarized as follows:

Corbari owed Lord some $15,000.00 on a promissory note. Lord wanted security from Corbari for the note. Corbari said he had none and Lord said what about your stock in Diamond-S Ranch Co. Corbari replied that his 310 shares of capital stock in Diamond-S Ranch Co. were pledged to the Bank of America in Stockton to secure Corbari's note to that bank and that if Lord wanted to pay off the balance due—some $5,500.00—he could secure the stock from the bank. Lord stated he was not in a position to pay off the note to the Bank of America and secure Corbari's 310 shares. So, Lord, instead of paying off the Bank of America and obtaining Corbari's stock, elected to and did prepare a document (which obviously, in view of Corbari's pledge of the stock to the bank, had no legal significance) which is set forth in full in Judge Ross' opinion.

Appellee Wahyou purchased the note from the Bank of America and obtained by assignment from that bank Corbari's note, upon which there was $5,000.00 plus interest due, together with the assignment of Corbari's pledged 310 shares in Diamond-S Ranch Co. Corbari failed to pay the Bank of America or Wahyou, Wahyou duly foreclosed the pledge, obtained title to the stock, and Corbari ceased to be a stockholder in Diamond-S Ranch Co.

While some of these proceedings were going on, Diamond-S Ranch Co. filed a certificate of dissolution in the office of the Secretary of State of Nevada,

later filed a certificate of revival under the laws of Nevada, *reviving and reinstating Diamond-S Ranch Co. as of the date of dissolution,* all as permitted by specific statutes of Nevada, so that for all intents and purposes the corporation never was dissolved. It is only by reason of the dissolution that Lord makes any claim against these appellees. Appellants' theory is that by its dissolution, the corporation ceased to exist from thence forward; it had no right or power to do anything except liquidate its assets and, after payment of its bills, pay the surplus to its former stockholders; that somehow or other the stock, as such, was wiped out and the former stockholders became partners and that Wahyou gained nothing by purchasing Corbari's stock at the foreclosure sale.

IV.

APPELLANTS' SPECIFICATIONS OF ERROR ARE NOT DETERMINATIVE OF THE ISSUES INVOLVED IN THIS CASE.

Before proceeding with the answer to the arguments contained in appellants' brief, we wish to call the Court's attention to the fact that appellants' arguments and citations of authorities have little or nothing to do with this case for the following reasons: Corbari owned 310 shares in Diamond-S Ranch Co. out of a total of 1572½ shares. The Uniform Stock Transfer Act was adopted in Nevada on March 22, 1945 (N.C.L. Sup. 1943-1938 Paragraphs 1854-1854.23). Diamond-S Ranch Co. was incorporated on December 17, 1945, and, of course, issued its stock

thereafter, so that the provisions of the Uniform Act were binding upon all parties.

Corbari owed a large sum of money to the Bank of America in Stockton, and on January 4, 1949, endorsed his certificate of stock for the 310 shares and assigned it to the Bank of America as collateral for the money he owed it; in other words, pledged his stock to secure the debt, executing at that time a collateral pledge agreement. Later, on September 18, 1950, he executed a second pledge agreement to the bank. Wahyou purchased Corbari's note from the Bank of America and secured an assignment of it, together with an assignment of the collateral, to-wit: the stock certificate and pledge agreements. Corbari failed to pay and Wahyou duly foreclosed the pledge, requested the corporation to cancel Corbari's certificate and issue a new certificate for 310 shares to Wahyou. Diamond-S Ranch Co. complied and issued a new certificate to Wahyou on May 21, 1951. Corbari's stock certificate for 310 shares represented his only interest in Diamond-S Ranch Co. The certificate itself was to the fullest extent possible representative of the shares. See Uniform Stock Transfer Act, Uniform Laws Annotated, Vol. 6, Sec. 1, Page 2, Commissioner's Note. Title to the certificate and to the shares represented thereby can be transferred only by delivery of the certificate, duly endorsed or endorsed on a separate document. See Uniform Stock Transfer Act, Uniform Laws Annotated, Vol. 6, Sec. 1, Page 2. That Act provides in Section 1 that title to a certificate and to the shares represented thereby can be transferred only:

"(a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself, provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent

Commissioners' Note

The provisions of this section are in accordance with the existing law (see Cook on Corporations, section 373 et seq.), except that the transfer of the certificate is here made to operate as a transfer of the shares whereas at common law it is the registry on the books of the company which makes the complete transfer. The reason for the change is in order that the certificate may, to the fullest extent possible, be the representative of the shares. This is the fundamental purpose of the whole act, and is in accordance with the mercantile usage. The transfer on the books of

the corporation becomes thus like the record of a deed of real estate under a registry system."

When Corbari endorsed and delivered the certificate to the bank, it was not essential that such transfer be recorded on the corporate books. See:

Pennroad Corp. v. Ladner, 21 Fed. Supp. 575 (Reversed on other grounds) 97 Fed. 2d 10;

12 *Cal. Jur.* 2d Par. 160 to 163, inc. pages 728 and 729;

and

California Corporation Laws, Ballantine & Sterling, 1949 Edition, par. 233, page 301,

states:

"An unregistered transferee of the certificates will prevail as against a subsequent attaching or execution creditor of the transferor, whether the creditor has notice of the transfer before his levy or not. Such a transfer leaves no interest in the assignor which can be reached by attachment or execution. The true owner has priority over attachment creditors and also over execution purchasers, since unregistered transfers are no longer declared invalid against purchasers on the faith of the records. The creditor obtains only such rights in the shares as his debtor actually had at the time of levy."

See, also:

California Corporation Laws, Ballantine & Sterling, 1949 Edition, paragraphs 234 and 235, page 302.

Unregistered transfer good against bona fide purchasers.

Upon the foreclosure of the pledge, Wahyou had a right to a transfer of the shares to his name on the books of the corporation and the corporation would have been guilty of conversion if it refused to do so. See:

Aronson v. Bank of America N. T. & S. A., 9 Cal. 2d 640, 72 Pac. 2d 548.

In

Mastellone v. Argo Oil Corp. (1950), 76 Atl. 2d 118,

the Court held that the holder of a stock certificate which had been properly assigned to him had the right to present it to the corporation for transfer to his name at any time, and where corporation entered into merger agreement with another corporation and no provision was made for transfer of outstanding stock, corporation which issued stock still had power to transfer it and issue new certificates.

The Diamond-S Ranch Co. had filed its certificate of dissolution with the Secretary of State of Nevada on September 7, 1950, and even if the corporation had not been revived, it still had power to issue new certificates to Wahyou. See Section 65, Paragraph 1664, Chapter 177, Statutes of Nevada of 1925 as amended, which states:

> "§1664. Expired, Dissolved, Corporations Remain Bodies Corporate Three Years for Certain Purposes.
>
> Sec. 65. All corporations, whether they expire by their own limitation, or are otherwise dissolved, shall nevertheless for the term of three years from such expiration or dissolution be con-

> tinued as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which said corporation shall have been established."

Transferring stock is certainly embraced within the term "enabling them gradually to settle and close their business" and, also, is embraced within the term "and to divide their capital stock".

The Bank of America obtained the title to Corbari's stock on January 4, 1949, subject only to Corbari's rights before foreclosure to pay the bank off and obtain the shares back, and there was nothing that Corbari, Diamond-S Ranch Co., or any of Corbari's creditors could have done to impair the bank's vested rights to these shares, and Wahyou had all the rights that the bank had after the bank assigned to Wahyou.

The transfer of Corbari's stock to the Bank of America occurred on January 4, 1949, some twenty (20) months before the certificate of dissolution was filed. *Fletcher Cyclopedia Corporations,* Permanent Edition, Vol. 16, page 880, paragraph 8136, states:

> "It is obvious that a transfer or assignment of its property by a corporation, before dissolution, if valid, is not affected by its subsequent dissolution, from whatever cause."

The dissolution of the corporation after the transfer could not affect the bank's rights nor its assignee's rights.

The so-called assignment from Corbari to the Estate of Smeed, executed by Corbari October 31, 1950, had no legal significance whatsoever. It is a meaningless document. There could be no such thing in law.

V.

ANSWER TO APPELLANTS' SPECIFICATIONS OF ERROR.

As to appellants' contention that the attempted revival of the corporation was invalid and without legal effect and the corporation is now and ever since dissolution has been without corporate existence, the law of Nevada specifically provides (Section 93 General Corporation Law of 1925 of Nevada as amended) (1692 NCL 1931-41) that after dissolution proceedings are instituted the corporation may be renewed or *revived,* and that such revival may date back on any date specified by the reviving corporation, which may be prior to the date of the Certificate of Revivor, and that was done in this case so that it is exactly the same as if no certificate of dissolution had ever been filed.

In

Fletcher Cyclopedia Corporations, Permanent Edition, Vol. 16, page 706,

it is stated:

> "The corporation, if revived or reinstated pursuant to statute, is the same corporation since another corporation cannot be created by such proceedings. It becomes reinvigorated with all its old powers and franchises, and with its duties

and obligations. Thereafter it may sue and be sued. Reinstatement of the corporation validates previous corporate acts, unless under the terms of the statute the delinquent corporation is, during the period of suspension, wholly without power to act or contract and its attempted acts or contracts are entirely void."

Once the corporation was revived as of the date of dissolution, as was specifically authorized by the Nevada statute, the corporation was in the same status as if it had never been dissolved.

See:

Russell Box Co. v. Commissioner of Corporation and Tax, 91 N.E. 2d 750 (Mass. 1950),

which states, in effect, that where a state statute gives a corporation power to revive, its power to dissolve is subject to the qualification that it could be revived, and it was as though the revival provisions were a part of its charter, and this law was held constitutional.

See, also:

Garzo v. Maid of the Mist Steamboat Co., 104 N.E. 2d 822.

Watts v. Liberty Royalties Corp., 106 Fed. 2d 941 (10th C.C.A.),

which holds that reinstatement after forfeiture restores all powers and validates all acts, including those done while under suspension.

Did the dissolution of Diamond-S Ranch Co. and subsequent reinstatement as of the date of dissolu-

tion have any effect upon appellants' right to create a lien against the assets of Diamond-S Ranch Co.?

We believe the answer is an unqualified "no".

In

Ballantine & Sterling's *California Corporation Laws Manual,* 1949 Edition, page 301, paragraph 233,

Ballantine states:

> "¶ 233. Unregistered Transfer Good Against Creditors of the Registered Owner.
>
> An unregistered transferee of the certificates will prevail as against a subsequent attaching or execution creditor of the transferor, whether the creditor has notice of the transfer before his levy or not. Such a transfer leaves no interest in the assignor which can be reached by attachment or execution. The true owner has priority over attachment creditors and also over execution purchasers, since unregistered transfers are no longer declared invalid against purchasers on the faith of the records. The creditor obtains only such rights in the shares as his debtor actually had at the time of levy."

In this case, the Nevada Legislature has specifically provided that any corporation that has elected to dissolve *shall,* nevertheless, for the term of three (3) years from such dissolution be continued as bodies corporate for certain purposes. Section 1692 N.C.L. 1931-41, relating to revivor of corporations, applies to a corporation which has been dissolved. That section provides that any corporation heretofore or now existing under the laws of this state may at any time

procure a renewal or *revivor* of its charter, and that section likewise specifically provides that the certificate of revivor *shall* contain the date when such renewal or revivor of the charter is to commence or be effective, which may be, in cases of a revivor, prior to the date of said certificate. These provisions of the Nevada law can only mean that at least within three (3) years after the certificate of dissolution is filed, the corporation may file a certificate of revival and that revival, if it is to commence or be effective as of the date of dissolution, places the corporation in exactly the same position as if no such certificate of dissolution had ever been filed.

See:

Massachusetts Lubricant Corp. v. Socony-Vacuum Oil Co., Inc., Supreme Court, Massachusetts, February 28, 1940, 25 N.E. 2d 719,

wherein the Massachusetts Supreme Court states:

"(1) The plaintiff was the owner of the lubricants, and its dissolution by St. 1934, c. 187, subject to the provisions of G.L. (Ter. Ed.) c. 155, §§51, 52, 56, and its revival on January 19, 1937, did not divest it of its title. It continued for three years from March 31, 1934, the date upon which St. 1934, c. 187, became effective, for the purpose of prosecuting and defending suits and for settling and winding up its affairs. G.L. (Ter. Ed.) c. 155 §51. Schreier v. Kinderhook Knitted Cap. Co., 251 App.Div. 16, 295 N.Y.S. 940. Before the statutory period had expired it had been 'revived for all purposes' 'with the same powers, duties and obligations as if it had not been dissolved.' G.L. (Ter. Ed.) c. 155, §56. Partan v.

Niemi, 288 Mass. 111, 192 N.E. 527, 97 A.L.R. 473; Harpoot Assyrian United Association of America v. Assyrian National Union, Inc., 296 Mass. 244, 5 N.E.2d 435."

In

Dominion Oil Co. v. Lamb, Supreme Court, Colorado, November 2, 1948, 201 Pac. 2d 372, headnotes 1 and 2, which are fully supported by the text, states as follows:

"1. Corporations 1,396

Corporations are creatures of statute and legislature can prescribe the rules by which corporations may be created and rules with which they must comply to continue existence, and can determine what penalties, if any, should be imposed for failure to comply with laws regarding payment of license fees and making of corporation reports.

2. Corporations 615½

When a corporation because of non-payment of taxes becomes by operation of law defunct, and thereafter by payment of the unpaid taxes becomes revived, the revived corporation is regarded as having had continuous existence. '35 C.S.A. Supp. c. 41 §83; c. 142, §103"

The same rule applies to this case. The Nevada Legislature had the power to prescribe the rules by which corporations may be created and with which they must comply to continue existence and how they can become dissolved and revived and what penalties, if any, such corporations must pay in order to revive.

In

Fletcher Cyclopedia Corporations, Permanent Edition, Vol. 16, page 914, paragraph 8156, the author states that the Legislature may by retrospective legislation revive a corporation which has become dissolved.

It is true that some of the older cases followed the common law rule that once a corporation was dissolved or its charter had expired it was dead for all purposes, but this rule has been changed almost completely by statute, and, even in the absence of a statute, the modern cases are to the contrary. When this corporation was formed under the laws of Nevada on December 17, 1945, the revivor statute heretofore mentioned was in full force and effect and the stockholders were, of course, bound by that statute and took their stock knowing that the corporation could elect to dissolve and could thereafter elect to revive, so that any rights any stockholders, or creditors for that matter, had were acquired with this knowledge and none of their vested rights were impaired by the corporation taking such action, as the law of Nevada permitted the corporation to take at the very time it was incorporated. The case of

Rossi v. Caire, 186 Cal. 544,

as well as the subsequent cases cited by appellants, are easily answered by the very language in the *Rossi* case itself. In the *Rossi* case, the Supreme Court says, at page 553:

> "We would have an entirely different case had there been a statute authorizing remission of for-

feiture and rehabilitation of the corporation at the time of the forfeiture of its charter. In that event the vesting of the property rights might well have been held to be upon condition."

The case of

Hibernia Securities Co. v. Morey, 23 Cal. App. 2d 482 (1937),

reviews the *Rossi* case, as well as many other cases, and points out that under modern law "during the forfeiture or the time that the corporation is denied the right to exercise corporate functions its existence is merely in a state of suspension, and with the compliance of the requirements of the statute it fully regains its original corporate status with the same powers which it possessed prior to the temporary loss of its corporate franchise, *and that upon restoration to corporate existence, the officers who were in office and the respective stockholders who owned the stock prior to the forfeiture resume each his original status."* (Emphasis ours.) See, also, the many cases cited in the *Hibernia* case, supra, which hold that once reinstated it is as if the corporation had never been suspended or dissolved.

In

Finch v. Finch, 68 Cal. App. 72,

the Court states at page 82:

"(11) Upon restoration to corporate existence each of the officers who was in office and the respective stockholders who owned the stock of the corporation, prior to the forfeiture of the char-

ter of the corporation, resumes each his original status with all the rights appertaining thereto, including, as to the stockholders, the right on dissolution of the corporation to a proportionate division of the assets thereof."

Appellants at page 22 of their brief, cite:

Hollingsworth v. Ditch Co. (C.C.A. 10, 1931), 51 Fed. 2d 649,

decided in 1931. In that case the plaintiff claimed title to a large number of shares of the common capital stock of Multi Trina Ditch Company, a corporation. The plaintiff alleged in her complaint that the corporate charter of the corporation expired and it became defunct July 1, 1927. She purchased this stock at an execution sale and asked that she be adjudged the owner of the shares and that her appropriate share of the assets (after payment of debts) be paid to her by the liquidating trustees. The Court held that in view of the fact that the corporation charter had expired, the only right she had was that of the registered owner of said shares which she acquired at the execution sale, and that since persons from whom she had acquired the stock could not have maintained this suit in the Court below, the plaintiff and assignee could not; and this by reason of Section 28 U.S.C.A. Paragraph 41.

The Court makes clear that the only point decided in the case is one of jurisdiction and states "This might be construed as a decision on the merits. To avoid that the excerpts will be modified to read thus:

And the Court having heard the arguments of counsel finds that the Court hath no jurisdiction in this case."

Appellants likewise cited at page 32 of their brief the case of

Buffum v. Peter Barceloux Co., 77 L. Ed. 1140, 289 U.S. 227.

In that case Henry Barceloux in April, 1926, owned one-quarter or 2500 shares of Peter Barceloux Company; the other three-quarters were owned by a brother, sister and three nephews. The book value of Henry's shares was $90,000 and the actual value $94,000. Henry had become heavily involved in debt. One Freeman had recovered judgment against him for $50,000. Henry Barceloux was indebted to the corporation in upwards of $33,000. In April, 1926, he secured part of this indebtedness by a pledge of 2,499 shares of the company stock. Henry Barceloux also owned shares of stock in other corporations, which he pledged as additional security for the debt he owed to the corporation.

Freeman died and his administrator made a demand upon the secretary of the corporation for a statement of the indebtedness secured by the pledge of stock and also requested that the corporation give him 90 days notice before enforcing its security. These requests were refused and the corporation sold all of the security, and the corporation bought the shares in for the amount of its claim against Henry Barceloux, and immediately sold the stock to George Bar-

celoux taking in payment George's promissory note with a pledge of the shares as collateral security. About two years later, the corporation cancelled the resale, gave back the promissory note to George Barceloux and thereafter held the shares as owner.

In the meantime Henry Barceloux disposed of all of his other assets and became a voluntary bankrupt. The trustee in bankruptcy brought this suit to set aside the transfer of the shares upon the ground that it was done with fraudulent intent. The Court found that the evidence sustained the finding of the District Court that the pledge to the defendant was made in fraud of creditors. The Court found that there was a general conspiracy between the defendant and members of his family to defraud the creditors of the defendant and that the conduct of the corporation and the family members in cancelling an indebtedness of $33,000 for stock certificates worth triple that amount plus other securities became part of a plan to appropriate a surplus and in combination with its debtor to hold the creditors at bay. The Supreme Court held that since the corporation defendant had sold all of the shares they were accountable for the value thereof and became a general creditor with the other creditors in the bankruptcy proceeding.

This case turned upon a clear unequivocal showing of fraud and conspiracy to defraud and bears no resemblance to the facts in the instant case.

In the case at bar, the trial Court found that "there was no fraud on the part of any of the defendants

named in connection with any of the acts by them performed as complained of in the complaint, including the dissolution and revival of the corporation and the acts and transactions in connection with the acquisition of the Corbari stock by Wahyou", nor was there the slightest evidence produced of any such fraud.

Appellants in their brief cited many cases from various jurisdictions to the effect that upon dissolution of a corporation it is legally dead; it had no rights of any kind and can perform no acts of any kind. This, of course, depends entirely upon the statutes of the state of incorporation and their construction.

See:

Fletcher Cyclopedia Corporations, Permanent Edition, Vol. 16, page 930, paragraph 8166.

For example, in

Rossi v. Caire, 186 Cal. 544,

cited by appellants, it is specifically stated, at page 553, that "we would have an entirely different case had there been a statute authorizing remission of forfeiture and rehabilitation of the corporation at the time of the forfeiture of its charter."

In

National Surety Co. of N. Y. v. Cobb, 66 Fed. 2d 323,

the statute, in that case, did not continue the life of the corporation.

In

Hollingsworth v. Multi Trina Ditch Co., 51 Fed. 2d 649,

the corporation was entirely defunct.

In

In re Booth's Drug Store, Inc., 19 Fed. Supp. 95,

the case states that at common law the corporation was completely dead, but not by modern rule or by most statutes, and it was held that bankruptcy would lie.

In:

Trower v. Stonebraker-Zea Live Stock Co., 17 Fed. Supp. 687,

it was stated that the statute may continue the life of the corporation. And this is true of every case cited by appellants along this line. The statute of Nevada which was enacted prior to the organization of the Diamond-S Ranch Co. expressly provided:

1. For the continuation of the life of the corporation for three years for certain enumerated purposes;

2. Expressly provided for the revival and reinstatement of the corporation, to relate back to the date of dissolution, the obvious intent of which was that the corporation should be treated after reinstatment as if no dissolution had ever occurred. There is a collection of cases along this line in

13 *A.L.R.* 2d 1220

where the editor states:

"That the reinstatement or revival of the corporate powers of a corporation validates its acts during such interim would seem to follow sometimes from the plain language of the applicable statute * * *"

See, also, the principal case annotated at 13 *A.L.R.* 2d 1215,

J. B. Wolfe, Inc. v. Salkind, 70 Atl. 2d 72,

which states:

"9. The reinstatement, upon compliance with applicable statutory provisions, of a corporate charter previously repealed for nonpayment of taxes relates back and validates corporate acts in the interim."

In

Fletcher Cyclopedia Corporations, Vol. 16, page 706, par. 7998,

it is stated:

"The corporation, if revived or reinstated pursuant to statute, is the same corporation, since another corporation cannot be created by such proceedings. It becomes reinvigorated with all its old powers and franchises, and with its duties and obligations. Thereafter it may sue and be sued. Reinstatement of the corporation validates previous corporate acts, unless under the terms of the statute the delinquent corporation is, during the period of suspension, wholly without power to act or contract and its attempted acts or contracts are entirely void."

See, also:

13 *Cal. Jur.* 2d page 212, par. 503.

As to appellants' statement that the directors of the corporation were trustees after the corporation filed its certificate of dissolution and were under some sort of fiduciary duty to appellants, it is stated in *Fletcher Cyclopedia Corporations,* Vol. 16, page 947, par. 8175:

> "Although the statutes characterize the directors upon dissolution as trustees, they are not trustees of a trust in any true sense of the word. Nor are they officers of the court, but they are merely statutory liquidators."

VI.

CONCLUSION.

Appellants knew before they prepared the so-called "Assignment" from Corbari that Corbari's only interest in the Diamond-S Ranch Co. was represented by a stock certificate for 310 shares of its common capital stock; that this stock certificate had been pledged to the Bank of America and there was over $5,000.00 owing thereon; that under the Uniform Stock Transfer Act they could secure no second lien or lien of any kind from Corbari without actually obtaining possession of this stock certificate and that to get possession of it they would have to pay off the bank. This they specifically stated they were unwilling to do. As the appellants could have foreseen, the debt

to the bank was not paid and the bank's assignee, Wahyou, obtained full title thereto, Corbari's interest therein being completely wiped out. Appellants could have no better interest in these shares than Corbari had, and at this point Corbari had none. Any dissolution or any other act of the corporation could not legally affect Wahyou's rights to this stock.

As to the dissolution of the Diamond-S Ranch Co. and its subsequent revival, the law of Nevada is perfectly plain. It states that after the filing of a certificate of dissolution, any corporation heretofore or now existing under the laws of that state may at any time procure a renewal or revival of its charter by filing a certificate of renewal or revival, and that such certificate should set forth the date when such renewal or revival of the charter was to commence or be effective, which may be, in cases of a revival, prior to the date of said certificate. This is plain language and obviously means that the corporation can be revived as of the date of dissolution, as was done in this case, so that in effect there was no dissolution and all acts done by the corporation during the period between the filing of its certificate of dissolution and revival are validated. In view of the fact that appellants were offered an opportunity to pay off the bank and obtain Corbari's shares of stock and refused to do so, they should have no cause for complaint.

Appellees feel, as evidently did the trial Court, that never at any time did appellants have any meritorious claim against these appellees and that their continuation of this action and this appeal were for purposes

of annoyance and harassment and that the judgment of the trial Court should be sustained.

Dated, March 7, 1956.

Respectfully submitted,

JOHN S. HALLEY,

Attorneys for A. E. Corbari and Marie Corbari.

JOHN DAVIDSON,

FORREST E. MACOMBER,

Attorneys for Appellees Diamond-S Ranch Co.; Sam Wahyou; A. E. Corbari, Sam Wahyou, K. R. Nutting and Thomas G. Lee, trustees for the assets of Diamond-S Ranch Co.; Thomas G. Lee; Toy Quong; Joe Sin; K. R. Nutting; Yip K. Toon; Herbert Jang, otherwise known as Herbert Jong.

(Appendix Follows.)

Appendix.

Appendix

In the United States District Court
for the District of Nevada

No. 1029

G. A. Miller, W. W. Lord, Ralph Smeed, L. H. Staus and Jack Smeed, trustees of John W. Smeed Estate,

Plaintiffs,

vs.

Archie E. Corbari, otherwise known as A. E. Corbari, Marie Corbari, Sam Wahyou, Diamond-S Ranch Co., incorporated under the laws of Nevada, et als.,

Defendants.

OPINION AND DECISION ON MOTIONS FOR SUMMARY JUDGMENT.

The above matter being at issue it was set for pretrial on the 18th day of January, 1955, at which time the Court made and entered its pretrial order. On June 16th, 1955, defendants (except D. W. Zignego and Forrest E. Macomber as to whom the action has been dismissed with prejudice) filed their motion for summary judgment pursuant to Rule 56 and for judg-

ment on the pleadings pursuant to Rule 7(c). The plaintiffs filed their motion for summary judgment under Rule 56(a)(c) on June 14th, 1955. Points and authorities in support of the respective motions were filed, and the motions were argued on the 11th day of July, 1955.

The plaintiffs' motion for summary judgment was supported by the depositions of Archie E. Corbari, Sam Wahyou, Forrest Macomber and W. W. Lord, and also an affidavit by W. W. Lord. In considering the respective motions of plaintiffs and defendants the Court had before it (1) all of the pleadings, (2) the depositions and affidavit above referred to, (3) the Court's pretrial order, (4) defendants' request for admissions and plaintiffs' response thereto, (5) the eighteen exhibits referred to in the schedule of exhibits attached to the pretrial order, and (6) the stipulation of the parties that they had no further evidence to offer.

Nature of Case

By this action the plaintiffs seek to impress a lien against the property of Diamond-S Ranch Co., one of the defendants, and particularly the real property referred to in Exhibit "C" attached to the original and amended complaint, said real property being situate in Humboldt County, Nevada, the record title being in the Diamond-S Ranch Co., a Nevada corporation. Plaintiffs claim the lien in their favor by reason of an assignment by A. E. Corbari and Marie Corbari, his wife, dated October 31st, 1950, whereby

Corbari and his wife assigned to W. W. Lord, as trustee for John W. Smeed, deceased, all their

> "right, title and interest in and to all of my partnership interest in the assets of a certain partnership formed by reason of the dissolution of Diamond-S Ranch Co., a Nevada corporation, and in and to any profits arising from the operation of said partnership."

There was no actual indorsement and/or delivery of the 310 shares of Corbari stock in the Diamond-S Co., at the time the written assignment was made, or at any later time. At the time of the delivery of the assignment to Lord the Corbari stock certificates evidencing his interest in the Diamond-S were in the actual possession of the Bank of America, Hunter Square Branch, Stockton, California, having been delivered to the Bank by Corbari by way of pledge.

Findings of Fact

Since the facts are somewhat involved the Court states them here in chronological order and as findings of fact. Diamond-S Ranch Co. is a Nevada corporation incorporated December 17, 1945, for the purpose of owning and operating ranch property situate in Humboldt County, Nevada. Of the 1572½ shares of stock issued by the corporation Corbari owned 310 shares, the defendants Sam Wahyou, Thomas G. Lee, Toy Quong, Joe Sin, K. R. Nutting, Yip K. Toon and Herbert Jang owning the balance. On January 4th, 1949, Corbari made and executed to Bank of America, Hunter Street Branch, a general assignment

and pledged his 310 shares of Diamond-S stock to the Bank to secure certain indebtedness for which he was wholly or jointly liable.

On September 18th, 1950, Corbari made and executed to the Bank a second pledge agreement securing a promissory note to the Bank dated July 10, 1950, in the amount of $6,000.00, and also to secure his note to one D. W. Zignego, one of defendants, in the sum of $12,500.00 on which there was a balance due of $10,000.00 plus interest, and to secure an indebtedness due one Forrest E. Macomber, another of the defendants named, in the amount of $12,000.00 plus interest. The pledge agreement of September 18, 1950, was to secure the indebtedness to the Bank, Zignego and Macomber in the order named.

About a week previous to this pledge agreement, on September 7th, 1950, the Diamond-S Ranch Co. filed a Certificate of Corporate Dissolution with the Secretary of State. On October 17th, 1950, Sam Wahyou bought from the Bank the Corbari note, on which there was a balance due of $5,000.00, and the Bank assigned and delivered to him the Corbari note and the pledged Corbari stock consisting of 310 shares in the Diamond-S Ranch.

On October 31st, 1950, Corbari, who had become indebted to Smeed during his lifetime in connection with the purchase of cattle, executed an assignment to W. W. Lord, testamentary trustee for Smeed. The assignment was to secure the payment of $15,041.34 plus interest, being the then amount of Corbari's indebtedness to the Smeed estate. The assignment to

Lord, as one of the trustees for the Smeed Estate, contained the following recital:

> "Now, therefore, in consideration of the premises, and to secure the payment of said indebtedness, I do hereby sell, assign, transfer and set over unto W. W. Lord, as Trustee, all my right, title and interest in and to all of my partnership interest in the assets of a certain partnership formed by reason of the dissolution of Diamond-S Ranch Co., a Nevada corporation, and in and to any profits arising from the operation of said partnership. I further state that I was the owner of 310 shares of stock in said Diamond-S Ranch Co., and that the total outstanding shares of stock in said company was 1,572½ shares, and that my interest in the partnership and the assets of the partnership formed in connection with the dissolution of said Company, is in the same proportion as was my holding of stock in the total outstanding issue thereof."

It is to be noted that there was no indorsement or delivery of the Corbari stock certificates to Lord, the certificates having been delivered and pledged to, and retained by, the Bank as above recited.

The Corbari note to the Bank, together with the pledged stock, having been sold, assigned and delivered by the Bank to Wahyou, on October 17th, 1950, Wahyou, through his agent and attorney, Macomber, noticed the pledged stock for pledgee's sale at public auction to be sold on May 21, 1951. Pursuant to said notice of sale the pledged Corbari stock, 310 shares, was sold on the 21st day of May, 1951, and purchased for the account of Wahyou for the sum of $5,500.00.

On December 7, 1951, the Diamond-S Ranch Co., by and through its then stockholders, Corbari not being named as such as Wahyou then owned his stock, filed a Certificate of Corporate Revival with the Secretary of State reinstating the corporation as of September 7th, 1950, which was the date of its prior dissolution.

The plaintiffs, trustees of the Smeed Estate, assert that at the time of the October 31, 1950, assignment to them by Corbari, or immediately prior thereto and while the matter of the assignment was under discussion, Corbari had represented to them that the Corbari stock was not subject to any outstanding lien or pledge. This is denied by Corbari as indicated by his deposition on file. In any event it would appear that the plaintiffs had notice of a lien against the stock some months prior to the October 31, 1950, assignment. See letter from W. W. Lord, trustee, to Corbari, of date March 25th, 1950, Exhibit 17, reading as follows:

"Dear Arch:

When you were here a few weeks ago, we made an agreement whereby we could get a second lien on the stock of your Nevada Corporation. This agreement was made at your suggestion and it seemed to us, as trustees of the Smeed property, that it was as fair as could be considering our position.

We have now heard from a lawyer in California refusing the second lien and wanting the trustees to pay off the bank in California. We are in no position to do what he suggests and we

are wondering if he misunderstood what we wanted to do or if you have changed your mind.

We are trying to close the estate and this is one of the few items to be determined. Please let us hear from you by return mail what to do.

Sincerely yours,
John W. Smeed Estate
By: W. W. Lord, Trustee."

Comment

On the basis of this factual situation the plaintiffs filed their original complaint in this Court on the 19th day of August, 1952, filing an amended complaint on the 21st day of October, 1954. The amended complaint alleges that on December 31, 1948, Corbari executed his note to Smeed, and that at the time of the filing of the complaint Corbari owed the Smeed Estate $14,291.34, plus various interest items. That on September 7, 1950, the

> "defendant corporation filed with the Secretary of State of State of Nevada the papers necessary to effect a voluntary dissolution of said corporation under Section 1664 (64) of the code of laws of the State of Nevada, (and) the Secretary issued the certificate therein provided for that said corporation was dissolved, and on that day said corporation was dissolved."

That the then board of directors, including Corbari and Wahyou, became trustees of the corporation and of its assets. That the trustees failed to carry out their duties and wind up the affairs of the corporation but continued to actively operate its business.

That on December 7, 1951, a Certificate of Revival or Renewal of Corporate Charter was filed with the Secretary of State. The Certificate recited the dissolution on September 7, 1950, and also that the corporation was

> "carrying on the business permitted by Sections 65 and 66, Chapter 177, Statutes of Nevada of 1925, as amended, and desires to renew or continue through revival its existence * * *."

To this certificate was attached a list of the then stockholders which list indicated that as of October 10, 1951, Corbari was not a stockholder. This, in view of the purchase of the Corbari stock at the sale of the pledged stock on May 21, 1951, was a correct statement.

In Count Three of their amended complaint, plaintiffs set forth the theory on which they seek to impress a lien on the assets of the corporation, namely, that the entire series of transactions whereby Wahyou purchased the Corbari-Bank of America note and received the pledged Corbari stock, were fraudulent and void as to the plaintiffs. That by the terms of Corbari's assignment to the trustees of the Smeed Estate on October 31st, 1950, the trustees had acquired all of Corbari's interest in the assets of the dissolved Diamond-S Ranch Co. It is to be observed that prior to the date of this assignment, October 31, 1950, all of the Corbari stock which the Bank held as a pledge had been by the Bank delivered to Wahyou on the 17th day of October, 1950, and that from that date on Wahyou held the stock as pledge until he acquired

ownership by purchase at the pledge sale on May 21, 1951.

Plaintiffs say that as one of the directors of the Company at the time of dissolution on September 7, 1950, Wahyou became a trustee for the stockholders and creditors of the corporation; that by reason thereof a fiduciary relationship existed between him and Corbari and the creditors, and that while he was acting as trustee for the purpose of winding up the affairs of the dissolved corporation he could not trade in the Corbari stock for his own benefit; that Corbari, Wahyou, and Macomber conspired to defraud the plaintiffs of the benefits accruing to them by virtue of the assignment of October 31, 1950.

Plaintiffs by their amended complaint pray (1) for judgment against A. E. Corbari and his wife for the balance due on their note executed to Smeed, being $14,291.34 together with several items of interest; (2) that the Court decree the plaintiffs to have a share in the assets of the corporation in proportion to the percentage that the 314 shares of Corbari stock bears to the total issued stock of 1572½ shares; (3) that all the remaining stockholders, officers and statutory trustees of the corporation account for any and all property and profits coming into their hands since the date of dissolution, September 7, 1950; (4) that the Court impress a lien against all of the corporate property for the payment of the balance of principal and interest due on the Corbari-Smeed note; (5) that the assets of the corporation be sold and the plaintiffs paid from the moneys received; (6) and that plain-

tiffs have personal judgment, jointly and severally, against the defendants Wahyou, Macomber, Nutting, Lee, Quong, Sin, Toon and Jang, for the sum of $14,291.34 balance due on the Corbari-Smeed note, plus the various items of interest.

The Issues

The pretrial order, referring to the issues presented by the pleadings states as follows:

> "The issues are, as to the first cause of action, whether an additional one thousand dollars should be credited upon the Corbari-Smeed note; as to the remaining counts whether or not the admitted facts are sufficient to create a lien against the assets of Diamond-S Ranch Co., be it presently existing as a corporation, or dissolved and its assets being presently held by its last board of directors as trustees in dissolution."

First Cause of Action

As to the first cause of action, being against the defendants A. E. Corbari and Marie Corbari, the Court finds that these defendants are indebted to the Smeed Estate in the amounts set forth in Paragraph VI of the amended complaint, namely for the sum of $14,291.34, plus interest at 5% per annum on the sum of $15,041.34 from December 31, 1948, to December 31, 1949, plus interest on $15,041.34 at 8% per annum from December 31, 1949, until November 22, 1950, plus interest on $14,291.34 at 8% per annum from November 22, 1950, until paid, plus a reasonable attorney fee which the Court fixes at ten (10%) percent of the total amount of principal and interest.

During the pretrial there was some controversy as to whether Corbari had been given credit for an additional $1,000.00 payment on the note for which he had received no credit. In this connection the pretrial order required the parties to submit further proof on this point.

Pursuant to this requirement the affidavit of W. W. Lord, one of the plaintiffs, was filed herein on the 3rd day of June 1955, and the statements therein made by Lord stand uncontradicted. It is indicated that the confusion as to the $1,000.00 payment arose by reason of Corbari having given a $1,000.00 check as a payment on the note which check was dishonored for lack of sufficient funds to pay the same, thus creating a situation where Corbari was entitled to no credit on his note. The Court finds these matters as set out in the Lord affidavit to be true.

It is to be observed that plaintiffs pray for a judgment on the Corbari note against the defendants Wahyou, Macomber, Nutting, Lee, Quong, Sin, Toon and Jang. The first cause of action being an action on the note does not concern the defendants other than Corbari and his wife, and plaintiffs are not entitled to a judgment against any of the other defendants named.

Second Cause of Action

This cause of action has to do with the legal effect of the dissolution and reinstatement of Diamond-S Ranch Co. under Section 1664 (64), N.C.L., 1929. Plaintiffs have no quarrel with the legal procedure

by which the dissolution came about or the reviver was invoked, but assert that after the dissolution the members of the last board of directors became statutory trustees with power only to wind up and terminate the affairs of the dissolved corporation, and that such power went no further than to dispose of the corporate assets, make payment to the creditors, and thereafter make a pro-rata distribution to the stockholders of any remaining money or assets. The plaintiffs assert that instead of winding up the affairs of the dissolved corporation the directors-trustees continued to operate the business of the corporation as a going concern and to all intents and purposes as though it had never been dissolved.

Plaintiffs further urge that the attempted revival of the dissolved corporation was fraudulent for the reason that the "Appointment of Agents", being an affidavit filed with the Secretary of State in connection with the revival proceedings, was false and fraudulent in that whereas it stated that the filing of the certificate for revival was authorized by the unanimous consent of all of the stockholders such was not the fact; that as a matter of law there were no stockholders, in a legal sense, after the date of dissolution, and in any event the affidavit did not list Corbari as the owner of 310 shares of stock.

Plaintiffs further urge that the affidavit failed to disclose the consent of the successors in interest of the Corbari stock to the revival proceedings, at the same time admitting that the Corbari stock was included in the designation of number of shares of stock

owned by Wahyou, his ownership being listed as 631 shares which was 310 shares (amount of Corbari's stock) in addition to his original ownership of 321 shares. Plaintiffs' contention in this respect is based upon their major premise that all of the actions of the directors-trustees after September 7th, 1950, date of dissolution, were fraudulent and void, and that all of the acts whereby Wahyou obtained the Corbari stock were fraudulent and void, and were all a part of a conspiracy to defraud the plaintiffs of the rights acquired by them under the Corbari-Lord assignment of October 31, 1950.

The Court finds that the defendant Wahyou lawfully acquired the Corbari stock, and that all legal requirements were observed in the dissolution and revival of the corporation, and therefore finds against the plaintiffs on Count Two of the complaint.

Third Cause of Action

This count is based on the proposition that the entire series of acts by which Wahyou obtained the Corbari stock were conceived in fraud, and executed in furtherance thereof. The Court is unable to find any evidence of fraud and holds that by virtue of the purchase of the Corbari stock at the sale of pledged property, May 21, 1951, Wahyou became the owner of, and entitled to, all of the benefits represented by the Corbari stock; that such sale and the acquiring of the Corbari stock by Wahyou, then a creditor of Corbari to the extent of some $12,000.00, was but a normal and rational procedure to be followed by one

in his position; that in connection therewith he breached no fiduciary relation to the plaintiffs, defendants, or any of the other creditors of the corporation; that the acts complained of were not tinged with fraud as against plaintiffs and/or any of the creditors of the corporation; and that any rights that the plaintiffs may have had in or to said stock, or in or to a proportional share in the assets of the corporation, were extinguished by sale of pledged property on May 21, 1951.

In this connection, and before proceeding further, the Court will note the plaintiffs' claim that (1) at the time Corbari made his assignment to Lord, *October* 31, 1950, he represented to the trustees that the stock was clear of liens. This Corbari denied, and it is evident from Lord's letter to Corbari dated March 25, 1950, that Lord knew of a prior assignment and/or pledge of the Corbari's stock several months prior to Corbari's assignment to him. The Court takes the position that this knowledge continued up to and including the date of the execution and delivery of the assignment. In any event it was sufficiently close to that occasion to have put plaintiffs, as reasonably prudent persons, on notice that there was sufficient reason to question the status of the stock, and to merit further inquiry on their part. Had they inquired, the true status of the stock could have been easily ascertained. In any event a false representation by Corbari to Lord made in connection with the assignment would not be binding on Wahyou unless it could be shown that Wahyou also had knowledge of such false rep-

resentation and thereafter by his conduct in connection with the sale of the pledged stock he became party to a conspiracy, as plaintiffs allege, to defraud the plaintiffs.

Based on the deposition on file herein, and particularly the deposition of Corbari and Wahyou, the Court finds that Corbari did not represent to Lord that the stock was "in the clear", but in any event if such a statement was made the Court finds that it was not relied upon by the plaintiffs. They appear to have taken the assignment for what it was worth to add security to a then existing debt evidenced by the unsecured note of date December 31, 1948, in the amount of $15,041.34, and with knowledge that Corbari was in a "bad way" financially, thus indicating that they felt they should take every precaution to secure the Smeed indebtedness and note, and inquire afterward. That this was the thought of plaintiffs is borne out by the wording of the assignment prepared by plaintiffs' attorney wherein no specific reference is made to the stock, and also by the fact that plaintiffs did not demand, obtain or get, an actual physical delivery of the Corbari stock certificates.

The Court further finds that there is no proof that Wahyou, at the time of the purchase of the stock at the pledge sale had any knowledge of the Corbari assignment to Lord, as trustee for the Smeed Estate, nor of any representations, true or false, made by Corbari to Lord in connection therewith.

The Court further finds that there was no fraud on the part of any of the defendants named in connection

with any of the acts by them performed, as complained of in the complaint, including the dissolution and revival of the corporation, and the acts and transactions in connection with the acquisition of the Corbari stock by Wahyou.

Fourth Cause of Action

What has been heretofore said will dispose of the contentions made by plaintiffs in Count Four of their amended complaint.

Conclusions of Law

As conclusions of law based upon the foregoing finding of facts the Court concludes:

1. That no genuine question of fact exists as to the First Cause of Action and that plaintiffs are entitled to summary judgment against A. E. Corbari and Marie Corbari on said First Cause of Action for the amount of principal and interest due on the Corbari note to Smeed of date December 31, 1948, as alleged in Paragraph VI of plaintiffs' amended complaint, together with an attorney fee in connection therewith in an amount equal to 10% of the total amount of principal and interest.

2. That the defendants are entitled to a summary judgment against the plaintiffs upon said Counts Two, Three and Four of the amended complaint.

It is therefore Ordered that plaintiffs' motion for summary judgment as to the First Count of their amended complaint, be and it is hereby granted, and

that defendants' motion for summary judgment on said Count be denied.

It is further Ordered that the defendants' motion for summary judgment as to the Second, Third and Fourth Count of the Amended Complaint be, and it is hereby granted, and that the plaintiffs' motion for summary judgment on said Counts is hereby denied.

It is further Ordered that the plaintiffs shall have judgment against the defendants Archie E. Corbari and Marie Corbari for their costs, and that the defendants, except Archie E. Corbari and Marie Corbari, shall have judgment against plaintiffs for their costs.

Let judgment be entered accordingly.

Dated at Carson City, Nevada, this 11th day of August, 1955.

John R. Ross,
United States District Judge.

Filed Aug. 11, 1955.
Oliver F. Pratt, Clerk.
By H. N. Jepsen, Deputy.